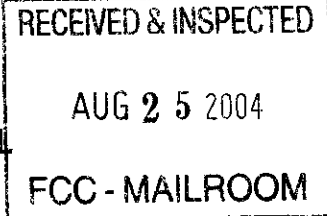


Federal Communications Commission
Washington, D.C. 20554



DOCKET FILE COPY ORIGINAL

In the matter of Request for Review of
the Decision of the
Universal Service Administrator by

North American Family Institute
Danvers, Massachusetts

Federal-State Joint Board on Universal Service

FCC DOCKET NO. 02-6

**REQUEST FOR REVIEW OF AN ADMINISTRATOR DECISION BY THE
FEDERAL COMMUNICATIONS COMMISSION**

i. Introduction

This is an appeal seeking review of an Administrator's Decision on Appeal dated June 30, 2004 by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). By this appeal, the North American Family Institute (NAFI) seeks review of the SLD's interpretation of certain NAFI funding requests as ineligible due to lack of an RFP. For the reasons which follow, NAFI respectfully requests that the FCC grant its appeal.

ii. Statement of the Relevant Facts

The North American Family Institute, Inc (NAFI) is a non-profit human service agency with a mission to create diverse and innovative services to help individuals assume control over their lives and become responsible and productive citizens. As a multi-state organization, we deliver a wide array of services for children, adults and families who need guidance, mental health, educational and integrated systems

NAFI
List A/B/C/D/E
0

of treatment and support. One significant part of our program is alternative K-12 schools for youth with special needs. These schools operate under the appropriate state departments of education and offer structured instruction in keeping with state curriculum requirements and which lead to high-school diplomas. It is for a number of these school programs in a number of states that we submitted the abovementioned 471 application for E-Rate eligible services. Because our schools are in a different states and utilize a large degree of site-based administration, there are a considerable number of vendors for these services, each chosen to best meet each school's needs.

All the funding requests on these three Form 471s were denied stating "Your form 470 indicated that you had an RFP describing the services you sought on this funding request. However, since you failed to provide RFPs that were requested in order to review the bidding process, the funding is denied." All of our schools are very small institutions. Most are in rural areas where there is little competition for local telephone services and few carriers offering cell phone coverage. For these reasons we have never received a request for a copy of our RFPs from any vendor in prior E-Rate years. We did not expect such a request this year and indeed stated so in our response to SLD queries during the review of these applications. Furthermore, local service for such small schools has always been on a tariff basis, further lowering the likelihood that a vendor would ask for an RFP. Similarly, procurement of a small number of cell phones or a small long distance buy is a month-to-month business under the vendors standard terms and conditions. For these reasons NAFI decided not to produced an RFP document until we received a request for one. No such request every arrived, which was in keeping with our E-Rate experience in prior years.

Finally, we note that had a request for an RFP been presented, it would have been very easy to create since there was no opportunity to demand special terms and conditions on such small procurements. Had we received a request for an RFP we were fully prepared to produce one within 24 hours which would have consisted simply of a list on local phone numbers, spending per location and number of cell phones required.

We respectfully suggest that the fact that no vendors pursue small opportunities such as we represent should not prejudice our application. We meet all the procurement requirements of the E-Rate process and were fully prepared to provide RFPs to all vendors who requested them. The fact that no vendors did request our RFPs should not be held against us.

iii. Questions Presented for Review

1. In reference to the denial of the NAFI appeal of May 18, 2004 by the SLD Decision on Appeal dated June 30, 2003, the questions presented for review are:
 - a. In the absence of any vendor queries based on the Form 470 posting or any other source was a finalized RFP necessary?
 - b. Was the consistent pattern over several years of lack of competitive vendor interest sufficient reason to not finalize an RFP document?
 - c. Did NAFI's behavior in this instance meet the competitive requirements of the E-Rate program?

iv. **Argument.**

a. **In the absence of any vendor queries based on the Form 470 posting or any other source was a finalized RFP necessary?**

Had a request for an RFP been presented NAFI would have created one. Since there was no opportunity to demand special terms and conditions on such small installations at each school. An RFP would have consisted merely of a list of schools, addresses, phone numbers and number of cell phones required. No change in the existing service level was contemplated. Had we received a request for an RFP we were fully prepared to produce one within 24 hours. We assert that the lack of a vendor query is reasonable grounds for not finalizing an RFP. Had a query been received NAFI would have been able to incorporate any specific requests for information from such a vendor. NAFI maintains that since no such requests were received it is reasonable business practice not to finalize an RFP document.

b. **Was the consistent pattern over several years of lack of competitive vendor interest sufficient reason to not finalize an RFP document?**

In the history of NAFI's participation in the E-Rate program, and indeed long prior experience before the E-Rate program, there has been little or no evidence of competitive interest in our small schools. The small number of lines and cell phones at each site make it cost prohibitive for a vendor to produce a competitive response. The geographic separation and rural location of most schools means that a single vendor can not respond to the schools a group. These factors are

beyond NAFI's control. In the absence of any past competitive interest NAFI made it unreasonable to produce an RFP which did not meet any legitimate business need.


c. Did NAFI's behavior in this instance meet the competitive requirements of the E-Rate program?

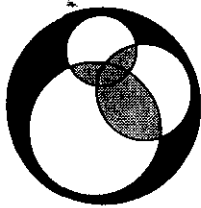
NAFI completely understands, supports and applauds the SLD's efforts to create a competitive telecommunication market. NAFI asserts that the lack of a finalized RFP in the absence of any vendor queries in no way negatively impacts these laudable program goals. NAFI has created RFPs and conducted full competitive procurements for Internet access and internal connections where such an approach is possible given market realities. The absence of a finalized RFP could in no way have impacted competition for this business since the vendors were told an RFP would be available and indeed would have been had such a request been received. We assert the NAFI's behavior was fully supportive of full market competition.

v. **Relief Sought**

For the reasons stated above, NAFI respectfully requests that the FCC grant its appeal and order that NAFI's application be remanded to the SLD to issue a new funding commitment decision providing discounts for the above funding requests.

Respectfully submitted,
THE NORTH AMERICAN FAMILY
INSTITUTE

By: 
Daniel Nakamoto, Executive Director of
Administrative Services
North American Family Institute
10 Harbor St
Danvers, MA 01923



NORTH AMERICAN FAMILY INSTITUTE, Inc.

creating diverse and innovative services for people

May 21, 2004

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

ADMINISTRATIVE OFFICES:

10 Harbor Street
Danvers, MA 01923
Tel: (978) 774-0774
Fax: (978) 774-8369
1st Floor Fax: (978) 774-2262
TTY: (978) 762-6314
Web Site: <http://nafi.com>

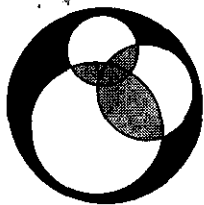
Reference: Funding Year 2003 (07/01/2003 – 06/30/2004)
Date of the FCDL: 03/30/2004
North American Family Institute, Billed Entity 227033
Applicant Form Identifier Local Phone, Form 471 number 383810
Applicant Form Identifier: Wireless, Form 471 number 383811
Applicant Form Identifier: Long Dist, Form 471 number 383813

The North American Family Institute (NAFI) respectfully requests reconsideration of the Schools and Libraries Division's rejection without processing of the above referenced funding requests (see attached). This letter and its attachments support our appeal of your decision. We request that you fully fund the denied funding requests since we believe that all material program requirements were fulfilled.

The North American Family Institute, Inc (NAFI) is a non-profit human service agency with a mission to create diverse and innovative services to help individuals assume control over their lives and become responsible and productive citizens. As a multi-state organization, we deliver a wide array of services for children, adults and families who need guidance, mental health, educational and integrated systems of treatment and support. One significant part of our program is alternative K-12 schools for youth with special needs. These schools operate under the appropriate state and local departments of education and offer structured instruction in keeping with state curriculum requirements and which lead to high-school diplomas. It is for a number of these school programs in a number of states that we submitted the abovementioned 471 application for E-Rate eligible services.

JUSTIFICATION FOR APPEAL

All the funding requests on these three Form 471s were denied stating "Your form 470 indicated that you had an RFP describing the services you sought on this funding request. However, since you failed to provide RFPs that were requested in order to review the bidding process, the funding is denied." All of our schools are very small institutions. Most are in rural areas where there is little competition for local telephone services and



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few carriers offering cell phone coverage. For these reasons we have never received a request for a copy of our RFPs from any vendor in prior E-Rate years. We did not expect such a request this year and indeed stated so in our response to SLD queries during the review of these applications. Furthermore, local service for such small schools has always been on a tariff basis, further lowering the likelihood that a vendor would ask for an RFP. Similarly, procurement of a small number of cell phones or a small long distance buy is a month-to-month business under the vendors standard terms and conditions. For these reasons NAFI decided not to produced an RFP document until we received a request for one. No such request every arrived, which was in keeping with our E-Rate experience in prior years.

Finally, we note that had a request for an RFP been presented, it would have been very easy to create since there was no opportunity to demand special terms and conditions on such small procurements. Had we received a request for an RFP we were fully prepared to produce one within 24 hours which would have consisted simply of a list on local phone numbers, spending per location and number of cell phones required.

We respectfully suggest that the fact that no vendors pursue small opportunities such as we represent should not prejudice our application. We meet all the procurement requirements of the E-Rate process and were fully prepared to provide RFPs to all vendors who requested them. The fact that no vendors did request our RFPs should not be held against us.

We respectfully request that you return our applications for full consideration and funding since the lack of a an RFP document in this instance was completely immaterial and in no way resulted in any violation of the E-Rate procurement rules.

Respectfully submitted,

Daniel Nakamoto
Executive Director of Administration
Telephone: (978) 774-0774 x127
Fax: (978) 774-8369
dannakamoto@nafi.com



June 30, 2004

Daniel Nakamoto
North American Family Institute, Inc
10 Harbor Street
Danvers, MA 01923

Re: Billed Entity Number: 227033
471 Application Number: 383810
Funding Request Number(s): 1058312, 1058313, 1058314, 1058315,
1058316, 1058317, 1058318, 1058319,
1058322, 1058323, 1058325, 1058326
Your Correspondence Dated: May 21, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) has made its decision in regard to your appeal of SLD’s Year 2003 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD’s decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (“FCC”). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 1058312, 1058313, 1058314, 1058315, 1058316, 1058317,
1058318, 1058319, 1058322, 1058323, 1058325, 1058326

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, you seek reversal of the SLD funding decision to deny the funding requests. In support of your request, you indicate that the schools are located in a rural area where there is little competition for local telephone services; hence, for this reason the schools never received a request from any vendor for a copy of the RFPs in any previous funding years. Thus, you did not expect such a request for the current funding year as well; however, if a request had been presented, the school would have been prepared to create one within 24 hours. You further state that because no vendor requested the RFPs, not having one(RFP) should not be held against the school.
- After thorough review of the appeal and the relevant facts and documentation, it is determined that SLD properly denied the funding requests. Your Form 470 stated

that you had requests for proposals ("RFPs") for the requested services. Thus, during the Item 25/Competitive Bidding Analysis review, on two separate occasions, April 21, 2003 and June 23, 2003, you were asked in writing to provide a copy of the RFPs. In your response dated June 30, 2003, you indicated that at the time of the filing of the Form 470 you had intended to prepare a draft RFP for the sought services; however, since no inquiries were received in response to the filing of the Form 470, the RFP was never finalized. On appeal, you fail to provide evidence that SLD erred in its original determination. Consequently, the appeal is denied.

- FCC rules require applicants to "submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, FCC 97-157, ¶ 570 (rel. May 8, 1997) (*Universal Service Order*). The FCC requires "the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids." *Id.* ¶ 575. A description of the telecommunications, Internet access and internal connections services being sought are required to be provided in items 8, 9 and 10 of the FCC Form 470. *See Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470*, OMB 3060-0806 (April 2002) (*FCC Form 470*). At items 8(a), 9(a), and 10(a), the applicant is required to indicate whether it has an RFP that specifies the services it is seeking.
- On the Form 470 associated with your funding request, you indicated that you had an RFP for the services for which you sought bids. During the Form 471 and appeal review process, you could not provide a copy of the RFP for these goods and services. The "requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person."¹ In your appeal, you have not shown that SLD's determination was incorrect. Since your Form 470 indicated that an RFP was available and you could not produce one, SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

¹ *Request for Review by Objective Communications, Inc. and Williams Communications Solutions, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2408, 15 FCC Rcd. 8395, ¶ 7 (rel. Nov. 2, 1999).

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2003-2004

June 30, 2004

Daniel Nakamoto
North American Family Institute, Inc
10 Harbor Street
Danvers, MA 01923

Re: Billed Entity Number: 227033
471 Application Number: 383811
Funding Request Number(s): 1058333, 1058334, 1058335, 1058336,
1058337, 1058338, 1058339, 1058340, 1058341
Your Correspondence Dated: May 21, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2003 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 1058333, 1058334, 1058335, 1058336, 1058337, 1058338,
1058339, 1058340, 1058341

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, you seek reversal of the SLD's funding decision to deny the funding requests. In support of your request, you indicate that the schools are located in a rural area where there is little competition for local telephone services; hence, for this reason the schools never received a request from any vendor for a copy of the requests for proposals ("RFPs") in any previous funding years. Thus, you did not expect such a request for the current funding year as well; however, if a request had been presented, the school would have been prepared to create one within 24 hours. You further state that because no vendor requested the RFPs, not having one (RFP) should not be held against the school.
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- On the Form 470 associated with your funding requests, you indicated that you had an RFP for the services for which you sought bids. During the Form 471 and appeal review process, you could not provide a copy of the RFP for these goods and services. The "requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person."¹ In your appeal, you have not shown that SLD's determination was incorrect. Since your Form 470 indicated that an RFP was available and you could not produce one, SLD denies your appeal.

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Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2003-2004

June 30, 2004

Daniel Nakamoto
North American Family Institute, Inc
10 Harbor Street
Danvers, MA 01923

Re: Billed Entity Number: 227033
 471 Application Number: 383813
 Funding Request Number(s): 1058354, 1058355, 1058356, 1058357, 1058358
 Your Correspondence Dated: May 21, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2003 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 1058354, 1058355, 1058356, 1058357, 1058358
Decision on Appeal: **Denied in full**
Explanation:

- On appeal, you seek reversal of the SLD funding decision to deny the funding requests. In support of your request, you indicate that the schools are located in a rural area where there is little competition for local telephone services; hence, for this reason the schools never received a request from any vendor for a copy of the RFPs in any previous funding years. Thus, you did not expect such a request for the current funding year as well; however, if a request had been presented, the school would have been prepared to create one within 24 hours. You further state that because no vendor requested the RFPs, not having one(RFP) should not be held against the school.
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- On the Form 470 associated with your funding request, you indicated that you had an RFP for the services for which you sought bids. During the Form 471 and appeal review process, you could not provide a copy of the RFP for these goods and services. The "requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person."¹ In your appeal, you have not shown that SLD's determination was incorrect. Since your Form 470 indicated that an RFP was available and you could not produce one, SLD denies your appeal.

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